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Two courts reject creative way to shelter husband's marital assets

When one party going through a divorce has already moved on to a new romantic relationship, this often adds to the sense of betrayal that a divorce can cause. While this emotional aspect can be devastating to the other spouse, the financial consequences of a spouse spending money on a new paramour must be examined.

In legal terms, this is called dissipation (750 ILCS 5/503(d)(2)). "Dissipation" is defined as a person's use of marital property for his or her sole benefit for a purpose unrelated to the marriage during a time when the marriage is undergoing an irretrievable breakdown. *In re Marriage of Hubbs*, 363 Ill.App.696 (5th Dist. 2006).

What specifically constitutes dissipation depends on the facts of each case. Generally, however, extraordinary expenditures that clearly do not further common marital interests are considered to be dissipation.

Spending marital money on a boyfriend or girlfriend is the most commonly known example. (See *In re Marriage of Awan*, 388 Ill.App.3d 204 (3rd Dist. 2009), and *In re Marriage of Tabassum and Younis*, 377 Ill.App.3d 761 (2nd Dist. 2007).)

However, other examples of dissipation include gambling losses (see *In re Marriage of Morrical*, 216 Ill.App.3d 643 (3rd Dist. 1991), and *In re Marriage of Sobo*, 205 Ill.App.3d 357 (1st Dist. 1990)); the payment of legal fees — although under the current statute they may be deemed an advance (*Head v. Head*, 168 Ill.App.3d 697 (1st Dist. 1988)); some investment losses and payments of mortgage and certain loans (see *In re Marriage of Petrovich*, 154 Ill.App.3d 881 (2d Dist. 1987), and *In re Marriage of Gurda*, 304 Ill.App.3d 1019 (1st Dist. 1999)).

All of these examples of dissipation involve situations where a spouse spends marital funds or depreciates the value of an existing marital asset. The recent case of *In re Marriage of Brill*, 2017 IL App (2d) 160604 (2017), illus-

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trates a creative attempt to avoid a dissipation claim which ultimately backfired.

In *Brill*, a husband purchased a house with his girlfriend while still married to his wife. The girlfriend provided the funds for the down payment, and the husband and girlfriend agreed that the girlfriend would be paid back when the house was sold and the re-

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maining proceeds would be divided equally between the husband and girlfriend.

Based on the cases cited above, had the husband contributed funds to the down payment, this would have constituted dissipation, and if so, those funds would have been treated as an advance to him from the marital estate. Presumably this is why the husband did not make any contribution to the down payment.

In response, the wife argued that the husband's one-half interest in the house was marital property in which she had an interest.

As defined in Section 503(a) of the Illinois Marriage and Dissolution of Marriage Act, "marital property" means all property, including debts and other obligations, acquired by either spouse subsequent to the marriage, except the following, which is known as "nonmarital property":

- Property acquired by gift, legacy or descent or property acquired in exchange for such property.
- Property acquired in exchange for property acquired before the marriage.
- Property acquired by a spouse after a judgment of legal separation.
- Property excluded by valid agreement of the parties, including a premarital agreement or a post-nuptial agreement.
- Any judgment or property obtained by judgment awarded to a spouse from the other spouse except, however, when a spouse is required to sue the other spouse to obtain insurance coverage or otherwise recover from a third party and the recovery is directly related to amounts advanced by

imbursement.

- The increase in value of non-marital property, irrespective of whether the increase results from a contribution of marital property, nonmarital property, the personal effort of a spouse, or otherwise, subject to the right of reimbursement provided in Subsection (c) of this section.

- Income from property acquired by a method listed in Paragraphs (1) through (7) of this subsection if the income is not attributable to the personal effort of a spouse. 750 ILCS 5/503(a).

The trial court in *Brill* agreed with the wife that the house was a marital asset and awarded her the value of half of the husband's interest in the house.

The appellate court affirmed the trial court, holding that since it was undisputed that the husband acquired the house during the marriage, it was presumptively marital property and the husband failed to prove by clear and convincing evidence that he acquired the house by one of the means specified in Section 503(a) of the marriage act.

In doing so, the appellate court rejected the husband's claim that his interest in the house was a gift from his girlfriend, finding that the down payment by the girlfriend was not a gift because she was to be repaid when the house was sold, noting that neither the husband nor the girlfriend even testified that the down payment was intended to be a gift to the husband.

While the husband in *Brill* may have avoided a dissipation claim, the court recognized that the wife still had a monetary interest in the house when it included some in the marital assets that were being divided.

The *Brill* case should serve as a warning to spouses going through a divorce that regardless of what you call it, whether you spend marital money on a nonmarital purpose during the marriage or you acquire property during the marriage even if you did not pay for it, the money spent or the property acquired will be taken into consideration when dividing the marital estate.